

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK W. SAMBUCA,

Plaintiff,

v.

NANCY A. BERRYHILL, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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CIVIL ACTION NO. 17-2920

ORDER

AND NOW, this 22nd day of October, 2018, after considering the complaint filed by the plaintiff, Frederick W. Sambuca (Doc. No. 1), the answer filed by the defendant, Nancy A. Berryhill, acting Commissioner of Social Security (Doc. No. 7), the administrative record (Doc. No. 6), the plaintiff's brief in support of her request for review (Doc. No. 8), the defendant's response to the request for review (Doc. No. 12), the plaintiff's reply to the defendant's response (Doc. No. 14), and the report and recommendation filed by United States Magistrate Judge Lynne A. Sitarski (Doc. No. 15); and no party having filed objections to the report and recommendation; accordingly, it is hereby **ORDERED** as follows:

1. The clerk of court is **DIRECTED** to **REMOVE** this matter from civil suspense and **RETURN** it to the court's active docket;
2. The report and recommendation (Doc. No. 15) is **APPROVED** and **ADOPTED**;¹

¹ Since neither party filed objections to Magistrate Judge Sitarski's report and recommendation, the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, "the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report." *Id.* As such, the court will review the report for plain error. *See Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) ("In the absence of a timely objection, . . . this Court will review [the magistrate judge's] Report and Recommendation for clear error." (internal quotation marks omitted)). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court has reviewed Magistrate Judge Sitarski's report for plain error and has found none.

3. The plaintiff's request for review is **GRANTED** insofar as she requests that the court vacate the decision of the Commissioner and remand for further proceedings;

4. The final decision of the Commissioner is **VACATED**, and this matter is **REMANDED** to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings consistent with the report and recommendation; and

5. The clerk of court is **DIRECTED** to mark this matter as **CLOSED**.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.